IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 26TH OCTOBER 2006 / 4TH KARTHIKA 1928

OP.No. 12945 of 2001(N)

PETITIONER:

V.A. YOUSUF RAWTHER, BLOCK NO. 1233, BALAGRAM P.O.,
IDUKKI DIST.

BY ADV. SRI.V.P.SUKUMAR
SRI.C.A.KURIAKOSE

RESPONDENTS:
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1. THE INTELLIGENCE OFFICER, SQUAD NO. I, COMMERCIAL TAXES, IDUKKI AT KATTAPPANA, IDUKKI DIST.

2. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, IDUKKI AT KATTAPPANA, IDUKKI DIST.

3. THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4. THE TAHSILDAR (RR), NEDUMKANDAM, IDUKKI DIST.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 20645 OF 2001 IN OP 12945 OF 2001

DISMISSED

26.10.2006 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE SAID PENALTY ORDER DATED 17.12.1997 PASSED BY THE FIRST RESPONDENT FOR THE YEAR 1992-93

EXT.P2 TRUE COPY OF THE PENALTY ORDER DATED 17.12.1997 PASSED BY THE FIRST RESPONDENT FOR THE YEAR 1994-95

EXT.P3 TRUE COPY OF THE REVISION ORDER DATED 11.11.1998 FOR THE YEAR 1992-93 PASSED BY THE 2ND RESPONDENT'S
EXT.P4 TRUE COPY OF THE REVISION ORDER DATED 13.11.1998 FOR THE YEAR 1994-95 PASSED BY THE 2ND RESPONDENT.

EXT.P5 TRUE COPY OF THE SECOND REVISION PETITIONS DATED 22.12.1998 FILED BEFORE THE 3RD RESPONDENT BY THE PETITIONER.

EXT.P6 TRUE COPY OF THE SECOND REVISION PETITIONS DATED 22.12.1998 FILED BEFORE THE THIRD RESPONDENT BY THE PETITIONER.

EXT.P7 TRUE COPY OF THE ARGUMENT NOTE DATED 18.11.99

EXT.P8 TRUE COPY OF THE ORDER DATED 6.1.2000 PASSED BY THE THIRD RESPONDENT FOR 1992-93

EXT.P9 TRUE COPY OF THE ORDER DATED 6.1.2000 PASSED BY THE THIRD RESPONDENT FOR 1994-95

EXT.P10 TRUE COPY OF THE RR NOTICE DATED 8.3.2001 ISSUED TO THE PETITIONER BY THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P.NO. 12945 OF 2001

Dated this the 26th day of October, 2006

JUDGMENT

Petitioner is challenging Exts.P8 and P9 orders of the Commissioner of commercial Taxes confirming levy of penalty under Section 45A of the KGST Act for evasion of tax in respect of alleged unaccounted inter-State purchase and sale of cement from Tamil Nadu Cements Corporation. While the penalty levied for 1993-94 is Rs. 5335/-, the penalty levied for 1994-95 is Rs. 3,05,065/-. The case of the petitioner is that petitioner has accounted the entire inter-State purchases even though the seller, which is a Government company under the control of the Tamil Nadu Government, has accounted the bigger volume of sales as inter-State sales by misusing the blank C forms issued by the petitioner. Even though no evidence is available to substantiate the contention of the petitioner, counsel for the petitioner referred to Ext.P9 produced in O.P.No. 2502 of 2001 and sought permission to rely on the same. In order to verify the genuineness of Ext.P9 produced in that O.P., this Court suo motu impleaded the Tamil

Nadu Cements Corporation. for getting confirmation from them. Even though counsel is engaged, no details are furnished by the said Corporation in Court. According to counsel, Corporation is no more successfully running, and is on the verge of closure. I have gone through Ext.P9. If Ext.P9 produced is a genuine document, then the findings therein are substantially in favour of the petitioner in this case. It is found in Ext.P9 produced in O.P.No.2502 of 2001 that Tamil Nadu Cements Corporation was engaged in unaccounted local sale of cements by declaring such sales as inter-State sales made to various parties in Kerala, including the petitioner herein. Therefore the contention of seller misusing blank C forms submitted by the petitioner cannot be ruled out. However, Government Pleader rightly pointed out that petitioner by issuing blank C forms has committed gross violation of provisions of CST (R & T) Rules and CST (Kerala) Rules in as much as he was prohibited from issuing blank C forms. On the other hand, C forms issued to a dealer should be kept in safe custody and only filled up C forms should be issued to the seller. For violation of the provisions of the Act and Rules, petitioner could have

been prosecuted under Section 10 of the CST Act and in lieu of prosecution petitioner is liable to be levied penalty under Section 10A of the Act. It is seen that petitioner has accounted purchases of some quantity of cement and therefore transaction with the supplier outside Kerala is conceded. Moreover, petitioner's very case itself is that petitioner permitted misuse of blank C forms and that has certainly caused loss of revenue in the State of Tamil Nadu also. Since transactions of the seller were clandestine and that too with the help of the petitioner, it is not possible to find out the exact unaccounted quantity purchased and sold in Kerala. The department has not strangely verified border checkpost records to find out whether petitioner has not accounted inter-State purchases, if any, passed through the checkpost. However, levy of penalty under Section 45A cannot be held to be without any basis. In the circumstances, and having regard to the finds in Ext.P9 produced in OP 2502 of 2002 which contains details pertaining to transactions of Tamil Nadu Cement Corporation with the petitioner, I feel petitioner can be granted the benefit of doubt.

O.P. is accordingly disposed of modifying Exts.P8 & P9 penalty orders for 1993-94 and 1994-95 reducing the total penalty for both the years to Rs. 1 lakh which is stated to be already paid out of this Rs. 5335/- which is the penalty levied for 1993-94 will be fully adjusted towards the said penalty and the balance amount will be adjusted towards penalty for 1994-95.

(C.N.RAMACHANDRAN NAIR)
Judge